

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1087 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

KARANSING MANUBHAI RATHOD

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR NR TANDEL for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 09/07/96

ORAL JUDGEMENT

Gujarat State Road Transport Corporation has preferred the present petition under Article 227 of the Constitution of India against the award passed by the Labour Court on 27.7.84 in Ref. (LCV) No. 93/83. The respondent Karansing Manubhai Rathod was working as a conductor with the petitioner incorporation. On 22.2.79

when he was on duty as a conductor on Sanoli Kavitha Road his bus was checked and in checking it was found that in all there were 6 passengers without tickets including 4 ladies. It was further found that though the respondent had received money from four lady passengers for the tickets, he had not issued tickets to any of them. Thereafter, the respondent was charged sheeted and departmental proceedings were held against him. On finding that he was guilty of the charge levelled against him, he was dismissed on 16.12.80. He therefore, raised a dispute regarding the said dismissal and on account of his raising said dispute, this Reference (LCV) No. 93/83 was made to the Labour Court, Baroda.

2. After hearing both the sides and giving opportunity to lead evidence to both sides the learned Presiding Officer of the Labour Court, Rajkot came to the conclusion that the order of dismissal passed by the petitioner-corporation was not justified and instead of punishment of dismissal, he awarded stoppage of two increments with future effect and ordered reinstatement without back wages.

3. Being aggrieved by the said award the corporation has come before this court. Admittedly before the Labour Court, there was no challenge regarding illegality of the departmental proceedings taken against the respondent herein. The respondent was a conductor and he was holding a sensitive post of trust and he was found guilty of misappropriation. When a bus conductor holds a sensitive post of trust and if he is guilty of misappropriation, especially in a public sector undertaking he must be dealt with sternly. The Labour Court was in error in awarding his reinstatement merely because the amount involved in the said misappropriation was a small amount. The Labour Court has also did not take into consideration the fact that though the respondent had put in all five years service, his previous service was not without any blame, and the Presiding Officer of the Labour Court himself has observed in para 5 of his judgment as under:

"Looking through the documents of the case it seems that the Second party has been working in the Dabhoi Depot as a conductor since nearly 5 years. On 22.8.79 he was on duty on the Sanoli-Kavitha route on Bus No. 4111. His bus was checked near Kavitha. At that time there were only 6 passengers. Out of that he had not issued tickets to 4 passengers. One passenger Bhagwanbhai was going from Sanoli to Kavitha.

From him the Second party herein oihad recovered a isum of 35 paisa but had not issued the ticket. From the village Fatta 5 passengers had boarded the bus. Out of that the conductor had issued tickets to two passengers. From three passengers, Devyaniben, Gitaben and Renuben he had recovered Rs. 1.05 but had not issued tickets. In the way bill he had not closed the block of 35 paise. The defence of the conductor was during the departmental inquiry that his obus was immediately checked . He was not feeling well and hence he was slightly lethargic in issuing the tickets to the other passengers also. But because they were female passengers and because of some other reasons the second party herein had recovered the fare from the female passengers but even then the tickets were not issued. The party's guilt is obviously seen. Even then his offence was for a very small amount. Looking through the earlier reports, he had not committed any serious offence. At one time he had taken one passenger without ticket. For that in 1977 he was given a reprimand. From that passenger he had onot demanded any money. Afterwards in 1978 the conductor seems to have committedi no offence. In 1979, when his bus was checked there were around 15 passengers without tickets. But the conductor had not recovered any fare from from them. For that offence he was punished with a fine of Rs. 4/-. One time he had not issued a luggage ticket and for that he was fined Rs. 1.50. Because these small offences, the conductor seems to have committed no other serious offence. It seems to me that to improve the conductor one more opportunity should be given ro him. This opportunity should be the last one and that should be understood by the conductor. The conductor had put in nearly 5 years of service. ,On ihm depends his family, livelihood and his childrens' education. Looking at all these icircumstances, I feel that the order of dismissal given to the conductor is excessive. Instead of the punishment of dismissal an order of stopping two increments with future effect should be enough. And on top of that the Second Party herein has not insisted on backward wages and hence in this reference under section 11(a) of the Industrial Disputes Act, I set aside the order of dismissal and pass the following order"

4. The above history of previous service of the respondent given by the Labour Court coupled with the fact that the respondent was a conductor and was found to have misappropriated the amount of the corporation which is a public sector undertaking and in the circumstances, if he is reinstated, then it would amount to giving ihm opportunity to continue and indulge in his misbehaviour. The Division Bench of this Court in the case of GSRTC vs. K.M.Parmar reported in 1993(1) GLR 302 had considered the case of a conductor who was found to have not issued tickets to the passengers after getting the fare from them and the Division Bench had set aside the order of the Labour Court of reinstating him by setting aside the order of the disciplinary authority. Said decision of the Division Bench of this court is fully covering the case before me and I am bound by the said decision of the Division Bench of this Court. Therefore, in the circumstances I am of the view that under section 11-A of the Industrial Disputes Act, the Labour Court was not at all justified in passing the order for reinstatement. On the contrary, the material on record shows that the Presiding Officer of the Labour Court has committed grave error in using discretion in favour of the respondent.

5. The learned advocate for the respondent Mr.Tandel urged before me that previous service record of the respondent could not be taken into consideration because in the charge sheet there was no reference to the previous service record. In support of that submission he has sought reliance upon the case of Parshottam Rajabhai (since deceased)by his Heirs & LRs Deevaben Rajabhai Bagdhda & anor. vs State of Gujarat and anr. reported in 1994(1) GLR 93. The facts and circumstances of that case is not applicable to the case before me. In the instant case the order of dismissal against the present respondent was not passed on account of previous record of his service but only on account of finding that he had committed misconduct. The previous record is taken into consideration by the learned Presiding Officer of the Labour Court in order to use his discretion u/s 11-A of the I.D.Act and I have quoted the said reference made by the learned Presiding Officer of the Labour Court in my judgment only in order to show that said previous record has been misapplied by the learned Presiding Officer of the Labour Court in using the discretion in favour of the respondent.

6. The learned advocate for the respondent further submitted before me that in case if the petition is allowed and the order of the dismissal of the respondent

as a conductor is to be restored, then the court should remand the matter to the Labour Court to consider as to whether the petitioner should be given any alternative job. From the material on record I am not inclined to consider this prayer of him in his favour. The respondent is already benefited as the petitioner corporation is ordered to pay him wages every month from the date of the order of the Labour Court till today inspite of the fact that he has not worked as a conductor. In view of the undisputed finding of his guilt as well as in view of the previous service history recorded by the Labour Court I am of the view that this is not a fit case for considering employment of the respondent in any other alternative job. Thus I hold that the present petition will have to be allowed. The order of the Labour Court passed in Ref.(LCV) No. 93/83 is quashed and set aside and the Rule is made absolute with no order as to costs.

(S.D.Pandit.J)